

123 FERC ¶ 61,187
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

City of Holland, Michigan

Docket No. EL05-55-002

v.

Midwest Independent Transmission
System Operator, Inc.

DTE Energy Trading, Inc.

Docket Nos. EL05-63-002
EL05-63-004

v.

Midwest Independent Transmission
System Operator, Inc.

ORDER CONDITIONALLY ACCEPTING REFUND REPORTS

(Issued May 20, 2008)

1. In this order, we conditionally accept Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) refund reports directed by the Commission in two orders on complaints. The orders granted complaints filed by the City of Holland, Michigan, (Holland) and DTE Energy Trading, Inc. (DTET).¹

¹ *City of Holland, Michigan v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,076 (Holland), order on reh'g, 112 FERC ¶ 61,105 (2005) (Holland Rehearing Order); *DTE Energy Trading, Inc. v. Midwest Independent Transmission Operator, Inc.*, 111 FERC ¶ 61,062 (DTET), order on reh'g, 113 FERC ¶ 61,214 (2005) (DTET Rehearing Order), order on reh'g, 119 FERC ¶ 61,109 (2007) (Second DTET Rehearing Order).

Background

2. In its complaint, Holland alleged that Midwest ISO charged a rate for non-firm redirect transmission service that violated sections 22.1 and 22.2 of Midwest ISO's Open Access Transmission Tariff (OATT). DTET's complaint contained similar allegations.

3. In the orders on the complaints, the Commission found that Midwest ISO had misapplied the OATT provisions governing non-firm redirect service. The Commission found that Midwest ISO violated section 22.2 of its OATT by assessing the higher hourly non-firm rate for firm point-to-point transmission service that was redirected on a non-firm basis in the same transmission pricing zone. The Commission directed Midwest ISO to refund, with interest, to Holland, DTET and other similarly situated customers, within 30 days, "the difference between the non-firm hourly rate assessed to [such customers] for redirect service within the same pricing zone and the original firm transmission service rate contained in [such customers'] primary reservations."²

4. Midwest ISO, Holland, and Cargill Power Markets, LLC (Cargill) filed requests for rehearing and/or clarification of *Holland*. Midwest ISO, DTET, and Constellation Energy Commodities Group, Inc. (Constellation) filed requests for rehearing and/or clarification of *DTET*.³

5. In the Holland Rehearing Order, the Commission clarified that under the Midwest ISO pricing structure in effect during the time covered by the Holland complaint, a different zonal rate would apply to a redirected transaction only if the sink point were moved to a higher-priced zone.⁴ The Commission concluded that if only the source point of the firm reservation was redirected and the sink point remained the same, or the sink point was redirected to another point within the same pricing zone (or a pricing zone of the same cost), no additional costs should have been incurred.⁵

6. In addressing Cargill's clarification request, the Commission found that Midwest ISO was required to provide refunds for any higher non-firm charges imposed on

² See *Holland* at P 24, Ordering Paragraphs (B) and (C); *DTET* at P 28, Ordering Paragraphs (B) and (C).

³ In a separate filing, Midwest ISO requested an extension of the refund date until September 16, 2005, which was granted conditioned upon Midwest ISO filing an interim status report by July 18, 2005.

⁴ Holland Rehearing Order at P 15.

⁵ *Id.*

redirected service within the same pricing zone, regardless of whether the non-firm redirect was hourly, daily, weekly or monthly.⁶ The Commission also found that “[t]o effectively calculate refunds for the inappropriate additional charges that Midwest ISO applied to redirect service that was not the higher cost pricing zone, . . . the base rate to be used by Midwest ISO should be a restated calculation of the Transmission Customer’s original firm reservation on a monthly, weekly, daily or hourly basis.”⁷

7. In the DTET Rehearing Order, the Commission clarified that the rate for redirected transactions is based on the rate for the designated sink point and does not change if the sink point remains the same. Any additional charge can only be the difference between the relevant zonal rates, not the “higher of” non-firm hourly rate charged by Midwest ISO. The Commission also stated that any additional charge must be the difference between the relevant zonal rates and not the “higher of” non-firm hourly rate charged by Midwest ISO. Any additional charge must be prorated to reflect the duration of the redirected transaction.⁸ The Commission clarified that DTET is entitled to refunds equal to the difference between Midwest ISO’s hourly non-firm rate and the charges properly due under the former section 22 for all service redirected since 2002, with interest.⁹

8. The Midwest Stand-Alone Transmission Companies¹⁰ (MSATs) and the Midwest ISO Transmission Owners¹¹ (TOs) filed requests for rehearing of the DTET Rehearing Order.

⁶ *Id.* P 16.

⁷ *Id.* P 17.

⁸ DTET Rehearing Order at P 9.

⁹ *Id.* P 10.

¹⁰ American Transmission Company LLC, International Transmission Company, and Michigan Electric Transmission Company, LLC.

¹¹ Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; Cinergy Services, Inc. (for Cincinnati Gas & Electric Co., PSI Energy, Inc. and Union Light Heat & Power Co.); City of Columbia Water and Light Department (Columbia, MO); City Water Light & Power (Springfield, IL); Great River Energy; (continued...)

9. The Commission denied the requests for rehearing. The Commission found that if Midwest ISO wanted to charge “higher of” pricing, it could have done so when it proposed the initial section 22.2 or could have made a filing proposing to do so at any time.¹² The Commission also rejected the parties’ interpretation of the *Appalachian*¹³ rate design principles, which the parties argued already apply in Midwest ISO. The Commission stated that Order No. 888 established the right of redirect on a non-firm basis as an integral feature of firm point-to-point transmission service.¹⁴ The Commission found that Midwest ISO’s interpretation was not reasonable and was inconsistent with Order Nos. 888 and 888-A.¹⁵ We noted that the MSATs and the Midwest ISO TOs were parties to and participated in the Holland’s complaint proceeding and that, in that proceeding, the Commission ordered Midwest ISO to pay retroactive refunds for intra-zonal redirects, plus interest.¹⁶ Finally, the Commission clarified that the refunds ordered in *DTET* and the *DTET* Rehearing Order are applicable to all customers who have been assessed the higher non-firm rate for redirect service.¹⁷

Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; LG&E Energy LLC (for Louisville Gas and Electric Company and Kentucky Utilities Company); Lincoln Electric System; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northwestern Wisconsin Electric Company; Otter Tail Corporation; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; and Wabash Valley Power Association, Inc.

¹² See Second *DTET* Rehearing Order at P 17 (citing *DTET* at P 26).

¹³ *Appalachian Power Company*, 39 FERC ¶ 61,296 (1987).

¹⁴ See Second *DTET* Rehearing Order at P 18, citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁵ *Id.*

¹⁶ See Second *DTET* Rehearing Order at P 20.

¹⁷ *Id.* P 21.

The Refund Reports

10. On September 16, 2005, Midwest ISO filed a refund report in Docket Nos. EL05-55-002 and EL05-63-002, as directed by the Commission in *DTET* and *Holland* (September 2005 Refund Report). The report summarizes refunds for all affected customers. Midwest ISO states that it made available to the affected customers and transmission owners individual files containing all of the data that is specific to them and setting forth the calculations performed to arrive at the results. Midwest ISO states that the refunds were paid on September 8, 2005, as part of an August 2005 transmission settlement. Midwest ISO further states that no refunds of any ancillary services charges have been made because there was no support for any such refunds in the Commission's orders.

11. On May 18, 2006, Midwest ISO filed a refund report in Docket No. EL05-63-004 in compliance with the DTET Rehearing Order (May 2006 Refund Report). It states that refunds were paid on May 15, 2006. Midwest ISO states that while the Commission did not provide guidance on prorating where the initial reservation is other than yearly, it has devised a method to determine refunds. For one hour of redirected service, the prorating was performed as follows: (1) where the initial zone reservation was yearly, the yearly firm rates in the initial zone and the redirect zone were divided by 8760 hours to determine the corresponding hourly firm rate equivalents; (2) where the initial zone reservation was monthly, the monthly firm rates in the initial and redirect zones were divided by the number of hours in the month in which the redirect took place to determine the corresponding hourly firm rate equivalents; (3) where the initial zone reservation was weekly, the weekly firm rates in the initial and redirect zone were divided by 168 hours to arrive at the corresponding hourly firm rate equivalents; and (4) where the initial zone reservation was daily (either daily on-peak or daily off-peak), the daily firm rates in the initial and redirect zone were divided by 24 hours to arrive at the corresponding hourly firm rate equivalents. The hourly firm rate equivalent in the redirect zone was then multiplied by the amount of redirected capacity to arrive at the Commission-authorized charge for a given hourly redirect. This charge was compared with the non-firm hourly charge the customer actually paid for the redirect in that hour, and, if the Commission-authorized charge was lower than the previously assessed redirect charge, the difference was refunded, with interest.

12. Addressing DTET's concerns about refunds stemming from its non-firm redirects from one outside sink to another outside sink, Midwest ISO states that they were treated as inter-zonal redirects and that refunds were calculated in the same manner as above. Midwest ISO states that delivery points at the Midwest ISO border are similar to inter-zonal redirects and that any refunds would be made under the DTET Rehearing Order.

13. Concerning DTET's claim that it is entitled to refunds of certain ancillary services charges, Midwest ISO states that neither *DTET* nor the DTET Rehearing Order provided for such refunds.

Notice of Filings

14. Notice of the May 2006 Refund Report was published in the *Federal Register*, with motions to intervene and protests due on or before June 8, 2006.¹⁸ A timely motion to intervene was filed by Ontario Power Generation Inc. (Ontario). DTET filed timely comments on the September 2005 Refund Report, raising two issues. First, DTET argues that Midwest ISO was required to refund all amounts overcharged for transactions redirected to different sink zones. DTET states that this would include the difference between the high-priced hourly non-firm rates actually assessed and the firm point-to-point charges applicable in the primary or redirect zone (whichever was higher).¹⁹ DTET also objects to Midwest ISO's intent to withhold amounts overcharged for ancillary services attendant to redirect service. It states that it was charged hourly ancillary services rates because the transmission service those ancillary services were associated with was hourly non-firm service. DTET argues that the proper charges for ancillary services provided in conjunction with redirect service would have recognized the fact that the transmission service was firm point-to-point service. DTET contends that the customers should have been charged the ancillary service rate attendant to that firm point-to-point rate.

15. In supplemental comments filed on November 14, 2005, DTET requests clarification that Midwest ISO must include refunds for redirects from one external interface sink (priced at Midwest ISO's single system-wide rate) to another external interface sink (priced at the same single system-wide rate). It asserts that any change from one such sink to another via a redirect necessarily remains within the same external interface pricing zone.²⁰ DTET argues that Midwest ISO failed to calculate refunds to DTET for non-firm redirect service redirected from one Midwest ISO border sink to another Midwest border sink.

¹⁸ 71 Fed. Reg. 32,530 (2006).

¹⁹ Comments of DTE Energy Trading, Inc. on the September 2005 Refund Report at 4.

²⁰ Supplemental Comments of DTE Energy Trading, Inc. on the September 2005 Refund Report at 3.

Discussion

A. Interventions

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), Ontario's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Analysis

17. In its comments on the September 2005 Refund Report, DTET argues that in *DTET*, Midwest ISO was required to refund all amounts overcharged for transactions redirected to different sink zones (*i.e.*, the difference between the hourly non-firm rates actually assessed and the firm point-to-point charges applicable in the primary or redirect zone (whichever was higher)). DTET had raised this same argument in its request for clarification of *DTET*, which was pending when it filed its comments on the September 2005 Refund Report. The Commission granted DTET's requested clarification in the DTET Rehearing Order, and Midwest ISO provided refunds of all amounts overcharged for redirects between different sink zones in the May 2006 Refund Report.

18. DTET also argues that all external interface sinks at the Midwest ISO border (such as the border with Ontario) together are a single external interface zone for transmission pricing purposes (priced at Midwest ISO's single system-wide rate) under Midwest ISO's TEMT. Thus, according to DTET, any transaction redirected from one such sink to another remains within the same external interface pricing zone and is covered by the express terms of *DTET*. DTET's concern has been addressed in the May 2006 Refund Report. While Midwest ISO states that such redirects are similar to inter-zonal redirects, rather than intra-zonal redirects, it states that refunds have been made for such transactions in accordance with the DTET Rehearing Order. As a result, only the ancillary service issue remains to be addressed here.

19. As DTET pointed out in its comments, Midwest ISO has not refunded amounts overcharged for ancillary services attendant to the redirect service in question. Midwest ISO states that it charged DTET hourly ancillary services rates because the transmission service with which those ancillary services were associated was hourly non-firm service.²¹ The proper charge for ancillary services provided in conjunction with redirect service was the rate for firm point-to-point service, just as redirecting customers should

²¹ See Answer and Motion for Expedited Consideration of Midwest Independent Transmission System Operator, Inc., Docket Nos. EL05-55-001 and EL05-63-001 (June 2, 2005) at 6-7.

have been charged, for the duration of the redirect, the firm point-to-point rate in the redirected or primary zone (whichever was higher).

20. The Commission found in Order No. 888 that redirect service is part of the flexible transmission service provided to and paid for by point-to-point customers. In Order No. 888, the Commission identified six ancillary services that the transmission provider must offer to transmission customers because they are needed to accomplish transmission service while maintaining reliability within and among control areas affected by the transmission service.²² Because these ancillary services are necessary to accomplish transmission service, they are part of any transmission service, including redirect service, and should be priced consistent with the service being provided. Accordingly we will direct Midwest ISO to make refunds, with interest calculated under section 35.19a of the Commission's regulations, of all amounts overcharged for ancillary services associated with redirected service at issue in these proceedings, within 30 days of the date of this order. We will also direct Midwest ISO to file a refund report with the Commission within 15 days of the date refunds are made.²³

The Commission orders:

(A) Midwest ISO's refund reports filed on September 16, 2005, and May 18, 2006, are hereby accepted, as discussed in the body of this order.

(B) Midwest ISO is hereby ordered to make refunds within 30 days of the date of issuance of this order and to file a refund report with the Commission within 15 days thereafter, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²² See Order No. 888 at 31,705. In its TEMT, Midwest ISO states that Ancillary Services are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service. See Midwest ISO FERC Electric Tariff, Third Revised Volume No. 1, Original Sheet No. 145.

²³ 18 C.F.R. § 35.19a (2007).